IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL SECOND APPEAL No. 246 of 2007

NATHU LAL
V/S
SMT.INDRA PRABHA

Mr. KR SARAN for Mr. SAJJAN SINGH, for the appellant / petitioner

Date of Order : 19.9.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the petitioner on the application.

The sole appellant is alleged to have expired on 10.2.2007, and the application under O. 22 Rule 3, so also another application under O. 22 Rule 9 read with Section 5 of the Limitation Act has been filed on 27.8.2007, whereupon the matter comes up. Obviously, the application for subsitution, or even application for setting aside abatement has not been filed in time.

It is alleged in para-3 of the application under O. 22 Rule 9, that the application has been delayed on account of unavoidable circumstances that after the death of the appellant, the wife of the appellant also expired on

20.4.2007, therefore, the applicants could not contact their counsel, and were not aware of the legal requirement of moving application within a particular time. However, the counsel for the appellant contacted the applicant on phone on 8.7.2007, and enquired about the deceased appellant, and the counsel advised to file application immediately, and accordingly the application is being submitted without any delay, after requisite preparation.

What is significant to note is, that before 8.7.2007 the matter was listed in the Court on 3.7.2007, on that day the counsel for the appellant informed the Court that the appellant has expired, therefore, he would take steps for substitution of legal representatives. It is obvious, that the fact must have been communicated to the counsel before this date 3.7.2007, and the application should have been, and could have been filed at that time itself. This is one aspect of the matter. The other and more important aspect of the matter is, that both the applications are supported by the affidavit of Pankaj Sen, which affidavits are sworn in at Jodhpur, on 19.8.2007 itself, while as noticed above, the applications have been filed on 27.8.2007, and not a word has been said to explain this delay of more than a week.

Thus, the totality of circumstances clearly show that application was not prevented by any sufficient cause

from not filing the application in time, or earlier.

The applications are, therefore, dismissed. Obviously, since the abatement is automatic, the appeal is also dismissed as abated.

(N P GUPTA),J.

/sushil/